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SB 468

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Testimony Before The House Judiciary Committee
In Opposition To SB468 – Admissibility In Evidence Of Seat Belt Use

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to speak in opposition to Senate Bill 468 concerning admissibility in evidence of seat belt use.

The adoption of Senate Bill 468 will undermine the public policy of Montana that has been embodied in statutes and case precedent for decades. More importantly, this legislation will adversely affect the rights of ordinary citizens involved in automobile accidents through no fault of their own.

Under the law that currently exists in Montana, if a law abiding driver is struck by another driver who, for instance, runs a stop sign or drives under the influence, it makes no difference in any subsequent civil litigation whether the law abiding driver or passenger used a seat belt. That rule of law makes sense.

If Senate Bill 468 passes, an unbelted driver who is struck by a drunk driver and who is forced into civil litigation for payment of property damage or medical bills, will suddenly face an allocation of blame and fault in an accident for which the unbelted driver shares no fault whatsoever. Under this bill, the insurer for the drunk driver will have the ability to deny or reduce payment of medical bills or property damage and force claims to a trial or a reduced settlement by allocating fault to the innocent party who had no role in actually causing the accident. Just as an argument that a driver of a compact car struck by a Mack truck running a stop sign somehow shares fault for simply driving a compact car would be viewed as absurd, so too should similar speculation concerning seat belt usage be rejected.

The proposed legislation directly conflicts with existing Montana statutes and public policy. The Legislature has consistently rejected primary seat belt legislation. Senate Bill 468 is not a compromise to a primary seat belt law. This bill is an intricate rule of evidence in civil litigation; it will be largely unknown to ordinary Montanans until they are forced into court in accidents where they share no blame. Likewise, when the Legislature enacted the Montana Seatbelt Use Act

22 years ago, it explicitly included a provision in the statute precluding introduction of evidence concerning seat belt usage in civil litigation. The statute also expressly provides that a failure to wear a seat belt does not constitute negligence on the part of the driver.

Senate Bill 468 also conflicts with Montana's strong public policy embodied in its Unfair Trade Practices Act. Insurers in Montana bear a statutory obligation to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Regardless of clear liability, when an accident occurs in which an unbelted driver shares no blame for causing the actual accident, an insurer will deny payments asserting that a judicial allocation of fault is necessary due to speculation concerning the driver's seat belt usage. This will undoubtedly clog the courts with all run-of-the-mill car accidents when insurers force all such cases to trial for a judicial determination on the speculative effect of seat belt usage, regardless of actual fault in causing the accident.

Finally, the proposed legislation conflicts with Montana precedent that has been well settled for nearly 30 years. In the case of *Kopischke v. First Continental Corporation*, the Montana Supreme Court made it very clear that the public policy of Montana does not favor evidence of seat belt usage in civil litigation. The rationale is as applicable today as it was in 1980. In a thorough opinion, the court reasoned that such evidence is inadmissible for, among numerous other reasons, there is no statutory requirement in Montana for seat belt usage; the majority of states do not allow evidence of seat belt usage; and allowing a seat belt defense would lead to a veritable battle of experts as to what injuries would have or would not have been avoided.

If the Legislature seeks to pass primary seat belt legislation, then it should do so. Senate Bill 468, however, creates a harsh and unsound rule which would deny all recovery to an injured motorist, whose mere failure to buckle his belt in no way contributed to the accident, and exonerate the at-fault driver but for whose negligence the injured party's omission would have been harmless.

Thank you for taking the time to consider my opposition to Senate Bill 468, and I would be pleased to answer any questions from Committee Members.